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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/742,343 | 12/19/2003 | Stephen Gara | THR-5005 USNP | 6427 |
| 27777 | 7590 | 05/11/2007 | | |
| PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003 | | | EXAMINER WIEST, PHILIP R | |
| | | | ART UNIT 3761 | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/742,343

Applicant(s)

GARA, STEPHEN

Examiner

Phil Wiest

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/1/07 has been entered.

Response to Amendment

2. In the amendment filed 3/1/07 the amendments to claim 1 is acknowledged. Claims 1-21 remain pending.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Weber (3,628,445). Weber discloses a device for irradiation fluids wherein the device is comprised of a first plate (2), a second plate (3), and multiple, evenly spaced dividers

(5). The device is fit together as a single unit by attaching the first and second plates to one another to define a chamber. The chamber forms a torturous or serpentine path (see figure 2). Weber teaches that the device may be made of any suitable material and that the device plates are transparent to rays in the wavelength between 3,500Å to 4,500Å which is equivalent to between 350 nm and 450 nm. The device has a first port 18 and a second port 19 in communication with the plates and chamber, said ports being fully capable of transferring blood through the irradiation chamber. See entire disclosure.

5. Claims 1-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Lee et al. (4,737,140). Lee et al. discloses a U.V. light assembly for use with an extracorporeal blood separation assembly. The U.V. light assembly is comprised of a first and second plates fit together to define a thin cavity to receive blood or separated blood components. The cavity is separated into a serpentine path by multiple, evenly spaced dividers. The chamber comprises a first port 209 and a second port 210 that are in fluid communication at opposite ends of the chamber. Lee teaches that the device may be made of polycarbonate and is transparent to UVA rays, which are in the wavelength range between 320 nm and 400 nm. Lee also teaches that a photoactivating agent, such as 8-methoxy psoralen (8 MOP), may be added to the blood or blood component (see col. 7, lines 12-14). It is also taught by Lee that the separated component from the blood can be leukocytes or a buffy coat.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weber (3,628,445). Weber discloses the invention substantially as claimed, see rejection *supra*, however, fails to disclose specifically that the plates are made of polycarbonate or acrylic. Weber does teaches that the device may be made of any suitable material. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the suitable material to be either polycarbonate or acrylic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Response to Arguments

9. Applicant's arguments filed 3/1/07 have been fully considered but they are not persuasive. Applicant argues that since the device of Weber is directed to irradiating alcoholic beverages at an angle to deliver the fluid uphill, the device of Weber does not anticipate the claimed invention and that the device cannot be positioned so that fluid flows with the assistance of gravity. Applicant also argues that the device of Lee does not disclose an arrangement that can allow for gravity assistance throughout the course of the flow of fluids, but rather must use a means that assists the flow through the chamber. The argument is based on the way in which the inlets and outlets are arranged. These arguments are not found to be persuasive.

In response to applicant's argument that the devices of either Weber or Lee cannot be positioned to allow gravity to act upon the fluid moving through the device, applicant recites that the device has a port "arranged such that during use, the flow of fluid through out said chamber is assisted by gravity" which is a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. *If the prior art structure is capable of performing the intended use, then it meets the claim.* Both devices are capable of being positioned to have a port to be used in a manner to deliver a fluid in an inlet and positioning the chamber to allow for gravity to act upon the fluid. The device is a stand-alone unit and it may be positioned in a manner to allow for gravity to act upon the fluids. There is no

specific or distinct structural element recited in the application claims that distinguishes the invention from the chambers of Weber or Lee.

Furthermore, applicant argues that the device of Weber is irrelevant because it is drawn to a different field of endeavor (irradiation of alcoholic beverages). While the device is intended to be used to irradiate alcoholic beverages, it is *fully capable* of being used to irradiate blood. Applicant's amendments fail to add any structural limitations to the claims.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phil Wiest whose telephone number is (571) 272-3235. The examiner can normally be reached on 8:30am-5pm EST.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PRW
5/3/07

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Tatyana', is written over the printed name and title.